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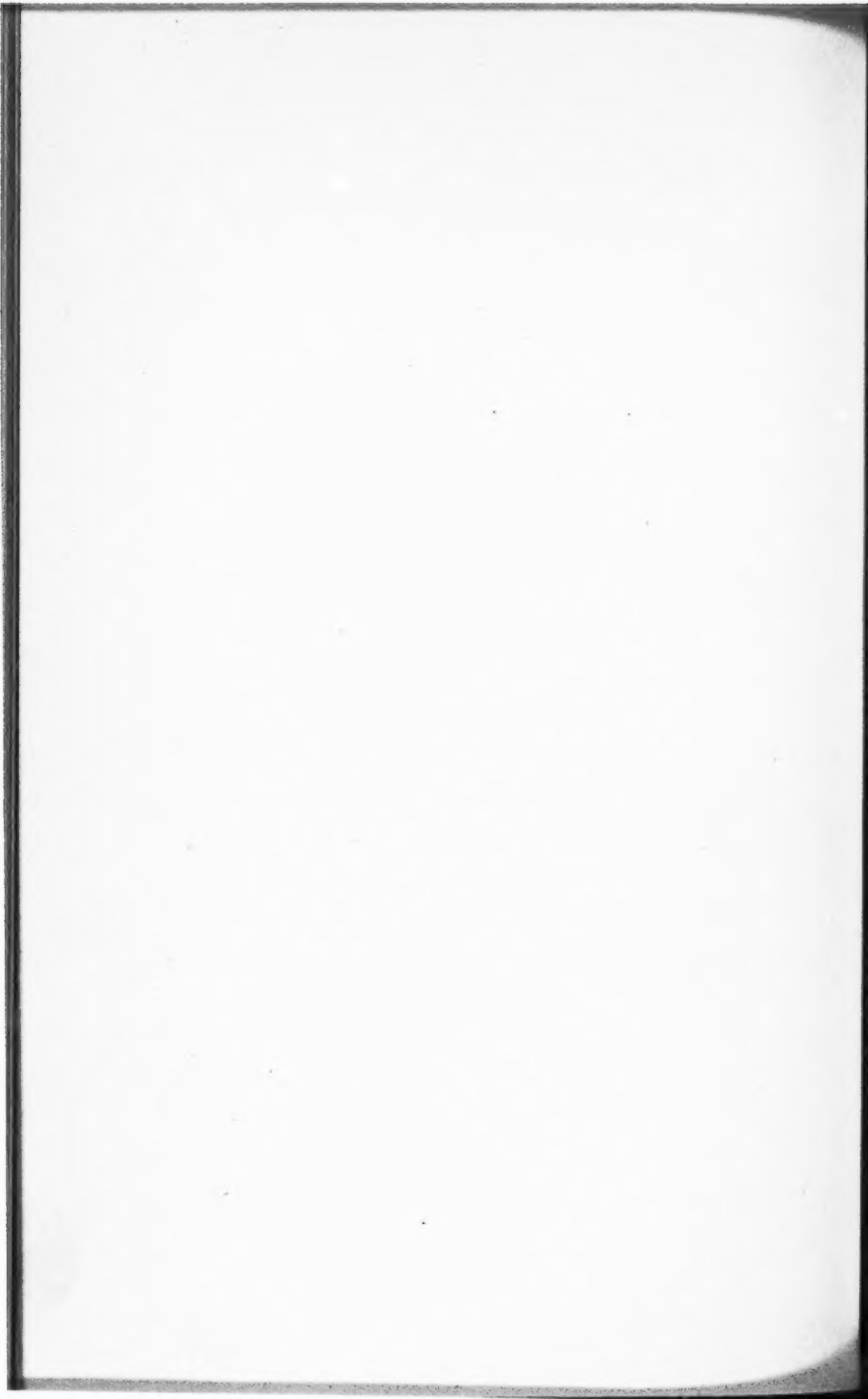
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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 321

THE NORSTRAND CORPORATION AND LEIF NORSTRAND,
PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

No opinion was rendered by the circuit court of appeals (Pet. 3).

JURISDICTION

The judgment of the circuit court of appeals was entered August 4, 1943 (Pet. 1), and the petition for a writ of certiorari was filed September 4, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

(1)

See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether the trial court's order denying a motion for reconsideration and reduction of sentence is appealable.

STATEMENT

On December 4, 1942, petitioners pleaded guilty in the United States District Court for the Southern District of New York to violation of Section 4 (a) of the Emergency Price Control Act of 1942 (c. 26, 56 Stat. 23, 50 U. S. C. App. Supp. II, sec. 904 (a)) in the buying and selling of waste paper at prices above ceiling, and the failing to keep accurate records thereof (Pet. 1, Pet. App. 8-9). On December 8, 1942, they were sentenced to pay fines totaling \$7,100 (Pet. 1-2), and on March 8, 1943, they filed a petition for "reconsideration or rehearing" of the judgment of sentence (Pet. 2), described by the clerk of the court as "a petition for reconsideration of a judgment and reduction in sentence" (Pet. App. 20), which was denied on April 19, 1943 (Pet. 2). On April 24, 1943, petitioners filed a notice of appeal from the sentence imposed on December 8, 1942, and from the denial of the petition for "reconsideration of the judgment" or reduction of sentence (Pet. 2). On July 19, 1943, the circuit court of appeals, without opinion, granted the Government's motion to dismiss the appeal (Pet. 2-3).

ARGUMENT

Although petitioners undertook to appeal from the judgment of conviction entered more than four months previous to their notice of appeal, they concede that they seek review only of the order denying their motion to reduce the sentence, it being petitioners' contention that they have "a right to show" that the trial court was guilty of an "abuse of discretion" in denying the motion (Pet. 4). Premitting the possible untimeliness of petitioners' appeal (see *Burr v. United States*, 86 F. (2d) 502, 503 (C. C. A. 7)), it is settled that an order denying a motion for reconsideration of judgment of a sentence which is within the limits allowed by statute is not appealable. *Bensen v. United States*, 93 F. (2d) 749, 751 (C. C. A. 9); *Beckett v. United States*, 84 F. (2d) 731, 732-733 (C. C. A. 6); *Kachnic v. United States*, 53 F. (2d) 312, 315 (C. C. A. 9); *Feinberg v. United States*, 2 F. (2d) 955, 958 (C. C. A. 8), and cases cited; *Bailey v. United States*, 284 Fed. 126, 127 (C. C. A. 7); see *Wayne Gas Co. v. Owens Co.*, 300 U. S. 131, 137; *Conboy v. First National Bank of Jersey City*, 203 U. S. 141, 145; *San Pedro Co. v. United States*, 146 U. S. 120, 137; cf. *Smith v. United States*, 52 F. (2d) 848 (C. C. A. 7), and cases cited.¹ "If there is one rule in

¹ Petitioners do not assert that the judgment as it appears on the face of the record is wholly or partially void and as such requires correction. See *Holiday v. Johnston*, 313 U. S. 342, 349; *Miller v. Aderhold*, 288 U. S. 206, 210, 211.

the federal criminal practice which is firmly established, it is that the appellate court has no control over a sentence which is within the limits allowed by a statute." *Gurera v. United States*, 40 F. (2d) 338, 340-341 (C. C. A. 8).

Furthermore, it is apparent from the petition that the denial of the motion to reduce the sentence was a proper exercise of the court's discretion. It is asserted that the sentence is the result of false representations made by the Assistant United States Attorney (Pet. 6), but the truth or falsity of such representations was at issue at the time of sentence, for the trial court stated in denying the petition "the questions now raised were all considered at the trial of sentence" (Pet. 5).² It is not asserted that petitioners sought to withdraw their plea of guilty or moved for a new trial on the basis of newly discovered evidence. The relief sought was therefore confined to modification of a judgment of sentence which fell within the authorized penalties of the statute. Such modification "was entirely within the discretion of the trial court." *Kachnic v. United States*, 53 F. (2d) 312, 315 (C. C. A. 9); cf. *Stephan v. United States*, 133 F. (2d) 87, 100 (C. C. A. 6), certiorari denied, 318 U. S. 781.

² Petitioners state that "there was no trial of sentence" (Pet. 6), but the petitioners inconsistently recite that when the court came to appraise "the profits," petitioners denied any profit (*id.*).

CONCLUSION

The case was correctly decided below. There is no conflict of decisions, and no important question of law is presented. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1943.